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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

TRUMAN K. GIBSON, JR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I.

Whether any federal constitutional requirement mandates this court or any state court to inquire into the sufficiency of evidence used in grand jury proceedings.

II.

Whether the indictment in this case was based on evidence of criminal conduct.

III.

Whether the issue concerning the propriety of the prosecutor's decision to seek a grand jury indictment rather than to proceed by way of information is properly before this Court where said issue was not properly raised during the state court proceedings in this case.

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Illinois in *People v. Whitlow*, 89 Ill.2d 322 (1982), can be found in petitioner's appendix 1. The opinion of the Illinois Appellate Court, Third District in *People v. Whitlow*, 86 Ill. App. 3d 858 (3rd Dist. 1980), can be found in petitioner's appendix 2.

JURISDICTION

The jurisdictional requisites have been adequately set forth in the Petition for Writ of Certiorari. However, as treated more fully within this Brief in Opposition, the respondent submits that the petitioner has not shown any compelling reason for this Court to exercise its sound judicial discretion and grant the requested Writ of Certiorari.

STATEMENT OF FACTS

Respondent adopts the statement of facts contained in the Illinois Supreme Court opinion and incorporates those facts by reference herein. (*See* Petition for Writ of Certiorari, Appendix 1, at 1-3).

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I.

THERE IS NO CONSTITUTIONAL REQUIREMENT APPLIED TO THE STATES THAT MANDATES THIS COURT OR ANY STATE COURT TO INQUIRE INTO THE SUFFICIENCY OF EVIDENCE USED IN GRAND JURY PROCEEDINGS.

Petitioner seeks review of the Illinois Supreme Court's judgment and opinion upholding the Appellate Court's refusal to reverse his conviction outright asserting that the State abused the grand jury process by obtaining an indictment against him without presenting any evidence of criminal conduct to the grand jury. Petition for Writ of Certiorari at 8-15. Specifically, petitioner contends that the Illinois Supreme Court's ruling that a court should not inquire into the adequacy of evidence presented to a grand jury is contrary to the generally accepted principles governing grand jury proceedings. The respondent submits that the Petition for Writ of Certiorari is improperly brought upon this basis because no novel federal question or "special or important reasons"[1] mandating review have been raised by petitioner. Moreover, the respondent maintains that the Supreme Court of Illinois properly applied the correct standard set forth by this Court in deciding whether it is proper to review the adequacy of evidence presented to a grand jury for purposes of indictment.

Petitioner's contentions notwithstanding, the correct and generally accepted standard was applied by the Illi-

[1] Rule 17, *Rules of the Supreme Court of the United States.*

nois court as first set forth in *Costello v. United States*, 350 U.S. 359 (1956). There, this Court held that:

> An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more.

Costello v. United States, 350 U.S. at 363 (footnote omitted). Indeed, it must be remembered that a grand jury proceeding "is an ex parte investigation to determine whether a crime has been committed and whether criminal proceedings should be instituted against any person." *United States v. Calandra*, 414 U.S. 338, 343-344 (1974). This Court reaffirmed the *Costello* rule in *United States v. Dionisio*, 410 U.S. 1 (1973), wherein it was stated:

> A grand jury has broad investigative powers to determine whether a crime has been committed and who has committed it. The jurors may act on tips, rumors, evidence offered by the prosecutor, or their own personal knowledge.

410 U.S. 1 at 15.

Since it is not a proceeding to determine the guilt or innocence of a defendant, any possible prejudice resulting from an invalid indictment disappears when a constitutionally valid trial jury later finds the accused either innocent or guilty beyond a reasonable doubt. *Rose v. Mitchell*, 443 U.S. 545, 575 (1979) (Stewart, J., concurring). Consistent with this rationale, this Court has never required that an indictment be quashed because it was supported in part by incomplete evidence (*Costello v. United States, supra*; *Holt v. United States*, 215 U.S. 245 (1910)), nor is a defendant entitled "to judicial oversight or review of the decision to prosecute." *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975). The willingness to let a grand jury's judgment substitute for that of a neutral and detached magistrate is attributable to the "grand jury's relationship to the courts and its historical role of pro-

tecting individuals from unjust prosecution." *Gerstein v. Pugh, supra*; *United States v. Calandra*, 414 U.S. at 342-346. In this regard, this Court has considered the grand jury to be:

> [A] primary security to the innocent against hasty, malicious and oppressive prosecution; it serves the invaluable function in our society of standing between the accuser and the accused, . . . , to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice and personal ill will.

Wood v. Georgia, 370 U.S. 375, 390 (1962).

That the standard developed by these cases was applied in the case at bar is clear from the Illinois Supreme Court opinion wherein that Court cites to *Costello* and states:

> [T]here are numerous cases to the effect that a court will not inquire into the adequacy of the evidence. (*E.g.*, *People v. Creque* (1978), 72 Ill. 2d 515, 522.) If it were otherwise, "a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not required by the Fifth Amendment." *Costello v. United States* (1956), 350 U.S. 359, 363, 100 L.Ed. 397, 402, 76 S.Ct. 406, 408-09.

People v. Whitlow, 89 Ill. 2d 322, 331 (1982).

The petitioner cites no case in which a state grand jury process has been held unconstitutional for complying with this standard. Petitioner instead relies on several federal Courts of Appeals cases to support his contention that the grand jury process was abused in the instant case. Respondent maintains that petitioner's reliance on these cases is misplaced given the well-established rule of law that:

> The principles which evolved on the basis of decisional law dealing with appeals within the federal

> court system are not, of course, necessarily based on any constitutional principle. Where they are not, *the States are free to follow or to disregard them so long as the state procedure as a whole remains consistent with due process of law.* See *Cupp v. Naughten*, 414 U.S. 141, 146 (1973). (Emphasis added)

Fletcher v. Weir, ... U.S. ....., 102 S.Ct. 1309, 1311 (1982). In other words, the evidentiary requisites of state grand jury proceedings do not have to abide by the supervisory mandates of the various federal courts of appeals. Nor are petitioner's creatively cited "general principles based upon the essential requirement of probable cause" (Petition at 12), sufficient to justify judicial review of the grand jury process where no review has been required by this Court. *Cf. People v. Rodgers*, 98 Ill. App. 3d 999 (2d Dist. 1981), *Petition for Leave to Appeal Allowed*, November 30, 1981, Docket Nos. 55561 and 55595 (where an indictment is valid on its face a trial court is precluded from reviewing evidence presented to a grand jury).

II.

THE GRAND JURY INDICTMENT IN THIS CASE WAS BASED ON EVIDENCE OF CRIMINAL CONDUCT.

Petitioner bases his argument that his indictment was invalid on his assertion that it was not supported by *any* evidence of criminal conduct. Petitioner supports this assertion by citing a number of federal cases which have held that an indictment based on no evidence of criminal conduct should be dismissed. Respondent maintains that petitioner's assertion that his indictment was not based on evidence of criminal conduct is unfounded.

That there was sufficient evidence presented to the grand jury is clear from the Illinois Supreme Court opinion wherein that Court states:

> A review of the grand jury transcript indicates that evidence was presented from which defendants' illegal conduct could be inferred.

People v. Whitlow, 89 Ill.2d at 331. Respondent submits that this factual determination made by the Illinois Supreme Court is dispositive and that the evidence adduced at the grand jury hearing supports a probable cause finding that petitioner engaged in illegal conduct. (*See generally* petitioner's Appendices 3 and 4)

III.

THE ISSUE CONCERNING THE PROPRIETY OF THE PROSECUTOR'S DECISION TO SEEK A GRAND JURY INDICTMENT RATHER THAN TO PROCEED BY WAY OF INFORMATION IS NOT PROPERLY BEFORE THIS COURT SINCE SAID ISSUE WAS NOT PROPERLY RAISED DURING THE STATE COURT PROCEEDINGS IN THIS CASE.

The Illinois Supreme Court opinion, in enumerating the issues raised by the petitioner and his co-defendants in the state courts, states the issues on appeal as follows: "(1) Was the grand jury process abused? (2) Should the indictment be held void? (3) Was the evidence insufficient to support the jury's guilty verdict?" *People v. Whitlow*, 89 Ill. 2d at 329. In his Petition for Writ of Certiorari petitioner raises, for the first time, the issue of whether a prosecutor's decision to seek criminal charges by means of a grand jury rather than through a preliminary hearing violates his right to equal protection of the law.[2] By failing to properly raise this claim in the lower courts petitioner is precluded from raising it

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[2] This issue was alluded to in a short, two-sentence, footnote in petitioner's brief in the Illinois Supreme Court (Brief at 72). However, no citation to any authorities was made and the footnote specifically noted that "this Court [the Illinois Supreme Court] need not reach the issue in this case. . . ."

before this Court, since this Court's review is limited to specific federal questions that were properly raised in the state courts. *Whitney v. California*, 274 U.S. 357, 362-363 (1926); *Dewey v. Des Moines*, 173 U.S. 193, 197-198 (1899); *Wilson v. Cook*, 327 U.S. 474, 483-484 (1945); *Adler v. Board of Education*, 342 U.S. 485, 496 (1952).

CONCLUSION

For the foregoing reasons, the People of the State of Illinois request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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July 23, 1982.

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